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Filing date: **05/12/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058054
Party	Defendant GMA Accessories, Inc.
Correspondence Address	NADIA MIRZA BOSTANY LAW FIRM PLLC 75 WALL STREET, SUITE 24F NEW YORK, NY 10005 UNITED STATES mail@bozlaw.com
Submission	Motion to Compel Discovery
Filer's Name	Nadia Mirza
Filer's e-mail	mail@bozlaw.com, John@bozlaw.com, n.mirza@bozlaw.com
Signature	/Nadia Mirza/
Date	05/12/2014
Attachments	Declaration.Dmarzocco.5.8.14.pdf(57923 bytes) ExhibitA.pdf(128650 bytes) ExhibitB.pdf(24233 bytes) ExhibitC.pdf(76539 bytes) ExhibitD.pdf(11859 bytes) ExhibitE.pdf(19599 bytes) Cert.Service.5.12.14.pdf(16798 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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MORRIS VISITOR PULICATIONS, LLC,

Petitioner,

**DECLARATION IN SUPPORT OF
MOTION TO COMPEL**

- v -

Cancellation No.: **92058054**

GMA ACCESSORIES, INC.,

Respondent.

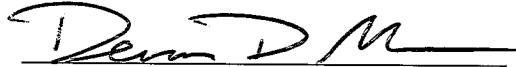
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Dennison D. Marzocco, hereby declares, under penalty of perjury pursuant to 28 U.S.C. §
1746, as follows:

1. I am the attorney for the Respondent in this proceeding and respectfully submit this Declaration in support of Respondent's Motion to Compel Discovery.
2. For the purposes of background, the parties held their board-ordered discovery conference on March 19, 2014. The parties agreed to follow the discovery dates provided in the Board's February 26 order, a copy of which is attached as **Exhibit A**. Namely, discovery opened on March 31, 2014 and the applicable dates set forth by the rules would remain unchanged. Additionally, a copy of undersigned's letter dated March 19, concerning the discovery dates and the conference is attached as **Exhibit B**.
3. On March 31, 2014, Respondent served its First Set of Interrogatories on Petitioner. (annexed hereto as **Exhibit C**). A copy of the certificate of service is attached as **Exhibit D**. These were due on May 3, 2014. Petitioner's responses were not received, nor any extension requested.

4. The undersigned attempted to persuade Petitioner to cure the violation, by writing Petitioner's counsel. A copy of the undersigned's May 5, 2014 letter is attached as **Exhibit E**.
5. Petitioner has made no efforts to respond to my correspondence.
6. On the other hand, Respondent has fully complied with its discovery obligations; including the submission of its Initial Rule 26 disclosures within the Board-designated due date. Respondent has received no separate discovery requests from the Petitioner.
7. Wherefore, Respondent respectfully requests that the Petitioner be compelled to answer Respondent's First Set of Interrogatories without objection.

Dated: New York, New York
May 8, 2014

THE BOSTANY LAW FIRM PLLC



By: Dennison D. Marzocco
Attorneys for Respondent
75 Wall Street, Suite 24F
New York, New York 10005
(212) 530-4400

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

RK

Mailed: February 26, 2014

Cancellation No. 92058054

Morris Visitor Publications, LLC

v.

GMA Accessories, Inc.

Yong Oh (Richard) Kim, Interlocutory Attorney:

This matter comes up on respondent's motion (filed December 19, 2013) to set aside the Board's notice of default. The motion is contested.

By the Board's institution order of October 22, 2013, respondent's answer to the petition for cancellation was due by December 1, 2013. As neither an answer nor a motion to extend time to answer was filed by respondent, a notice of default issued on December 17, 2013. Two days later, respondent moved to set aside the default attaching its answer to the petition for cancellation.

The standard for determining whether default judgment should be entered against the defendant for its failure to file a timely answer to the complaint is found in Fed. R. Civ. P. 55(c) which states that "[t]he court may set aside an entry of default for good cause." Good cause is

generally found where "(1) the delay in filing is not the result of willful conduct or gross neglect, (2) the delay will not result in substantial prejudice to the opposing party, and (3) the defendant has a meritorious defense." *DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d 1222, 1223 (TTAB 2000).

Taking each of these points in reverse order, the showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint. See TBMP § 312.02 (2013). Here, by filing an answer denying the salient allegations of the petition for cancellation, respondent has shown its intent to defend itself in this cancellation and that it has a meritorious defense to petitioner's claims. See *DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d at 1224.

As to the question of prejudice, an answer was due by December 1, 2013, a notice of default issued on December 17, 2013, and an answer was filed on December 19, 2013. Respondent's delay in filing its answer is less than three weeks and only two days after being notified of the default. There is nothing in the record to suggest, and petitioner has not demonstrated otherwise, that petitioner has been prejudiced by the resultant delay. Rather, the majority of petitioner's opposition to respondent's motion to set aside the notice of default is dedicated to pointing out the alleged falsity of respondent's assertion that the parties


Cancellation No. 92058054

were engaged in settlement discussions in September and October of 2013. However, the verity of the statement, or lack thereof, in and of itself, fails to demonstrate that respondent's delay in filing its answer was the result of willful conduct or gross neglect. Indeed, the promptness of respondent's response to the notice of default, along with its answer to the petition for cancellation, would suggest that there was no willful delay on the part of respondent and there is nothing in the record to suggest that respondent was grossly negligent in failing to file its answer.

Because the law favors deciding cases on their merits, the Board is reluctant to grant judgments of default and tends to resolve all doubts by setting aside default, particularly when a proceeding is at such an early stage as is the case here. *See Paolo's Associates Limited Partnership v. Paolo Boda*, 21 USPQ2d 1899 (Comm'r 1990).

In view thereof, respondent's motion is **GRANTED** and the notice of default is hereby **SET ASIDE**. Respondent's proposed answer is **ACCEPTED** and is now respondent's operative pleading herein. Proceedings herein are **RESUMED** and dates are **RESET** as follows:

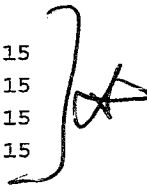
Deadline for Discovery Conference	3/31/2014
Discovery Opens	3/31/2014
Initial Disclosures Due	4/30/2014
Expert Disclosures Due	8/28/2014
Discovery Closes	9/27/2014
Plaintiff's Pretrial Disclosures Due	11/11/2014
Plaintiff's 30-day Trial Period Ends	12/26/2014



Cancellation No. 92058054

Defendant's Pretrial Disclosures Due
Defendant's 30-day Trial Period Ends
Plaintiff's Rebuttal Disclosures Due
Plaintiff's 15-day Rebuttal Period Ends

1/10/2015
2/24/2015
3/11/2015
4/10/2015



IN EACH INSTANCE, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within **thirty days** after completion of taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

* * *

BOSTANY LAW FIRM PLLC

75 WALL STREET
NEW YORK, NEW YORK 10005

TEL: 212-530-4400

FAX: 212-530-4488

NEW JERSEY OFFICE

ONE GATEWAY CENTER
NEWARK, NJ 07102

March 19, 2014

Timothy E. Moses, Esq.
Moses Law Group, LLC
6 George C. Wilson Court
Augusta, Georgia 30909

Re: CHARLOTTE (U.S. Reg. 360046)
Cancellation No. 92058054

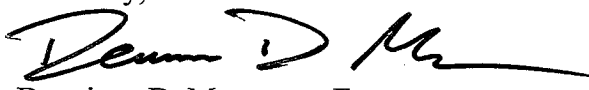
Dear Mr. Moses:

This letter briefly memorializes today's board-ordered discovery conference attended by you, myself and Mr. Schweers.

We began the call by briefly mentioning that settlement discussions were premature. You did not have an offer and I did not have a demand.

We agreed to follow without altering the discovery dates provided in the Board's February 26, 2014 order. Please be advised that the Order opens discovery on March 31, 2014, with Rule 26(1) disclosures being due April 30, 2014.

Sincerely,


Dennison D. Marzocco, Esq.

cc: Noel Schweers, Esq.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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MORRIS VISITOR PULICATIONS, LLC,

Petitioner,

**RESPONDENT'S FIRST SET
OF INTERROGATORIES**

- v -

Cancellation No.: **92058054**

GMA ACCESSORIES, INC.,

Respondent.

-----X

Pursuant to 37 C.F.R. § 2.120 and Rule 33 of the Federal Rules of Civil Procedure, Respondent GMA Accessories, Inc. ("GMA"), through its undersigned counsel of record, hereby demands that Petitioner, Morris Visitor Publications, LLC, ("Petitioner") serve answers to the following interrogatories, in writing and under oath, no later than 10:00 a.m. April 30, 2014.

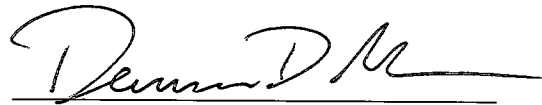
INTERROGATORIES

1. Identify each service that is covered under Application No. 8566120 that Petitioner has made use of in commerce.
2. Identify each service bearing the words "CHARLOTTE WEDDING" that Respondent intends to use in commerce.
3. Identify each region or location in which Petitioner has used "CHARLOTTE WEDDING" for the services covered in Application No. 8566120.
4. Identify each different commercial channel through which services bearing "CHARLOTTE WEDDING" have been used in commerce.
5. Identify each different commercial channel through which Petitioner intends to use in commerce services or products in connection with "CHARLOTTE WEDDING."

6. Identify all individuals with knowledge of the selection and adoption of “CHARLOTTE” and/or “CHARLOTTE WEDDING” by Petitioner.
7. Identify each expert that Petitioner may rely upon in this Cancellation proceeding.
8. Identify the principal owners and/or shareholders of Petitioner.
9. Identify each different advertising agency engaged to advertise and/or promote products or services by Petitioner in connection with “CHARLOTTE” and/or “CHARLOTTE WEDDING.”
10. Describe the differences, if any, in the appearance, sound, connotation and commercial impression of “CHARLOTTE” as used in the “Respondent’s Registration” as defined on page 1 of the Petition and “CHARLOTTE WEDDING” as defined in Application No. 8566120
11. Describe in detail in what regards you believe that the Trademark Examiner erred in refusing registration of Application No. 8566120.

Dated: New York, New York
March 31, 2014

THE BOSTANY LAW FIRM PLLC
Attorneys for the Respondent

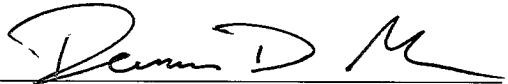


By: Dennison D. Marzocco, Esq.
75 Wall Street, Suite 24F
New York, New York 10005
(212) 504-5620

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Respondent's First Set of Interrogatories is being deposited with the United States Postal Service on March 31, 2014, postage pre-paid, addressed to the following:


Timothy E. Moses, Esq.
Moses Law Group, LLC
1030 Stevens Creek Road, Suite 140
Augusta, Georgia 30907-3204

By: 
Dennison D. Marzocco, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Respondent's First Set of Interrogatories is being deposited with the United States Postal Service on March 31, 2014, postage pre-paid, addressed to the following:

Timothy E. Moses, Esq.
Moses Law Group, LLC
1030 Stevens Creek Road, Suite 140
Augusta, Georgia 30907-3204

By: 
Dennison D. Marzocco, Esq.

BOSTANY LAW FIRM PLLC

75 WALL STREET
NEW YORK, NEW YORK 10005
TEL: 212-530-4400
FAX: 212-530-4488

NEW JERSEY OFFICE
ONE GATEWAY CENTER
NEWARK, NJ 07102

May 5, 2014

Timothy E. Moses, Esq.
Moses Law Group, LLC
1030 Stevens Creek Road, Suite 140
Augusta, Georgia 30909

Re: CHARLOTTE (U.S. Reg. 360046)
Cancellation No. 92058054

Dear Mr. Moses:

Respondent served Interrogatories upon your office on March 31, 2014, for which responses were due on May 3, 2014. The due date passed and the petitioner has not provided its responses.

Please provide completed responses or we will be forced to seek intervention from the Board concerning the existing violation.

Sincerely,


Dennison D. Marzocco, Esq.

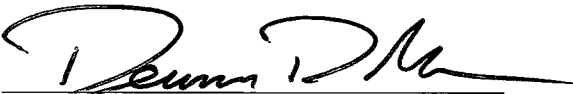
cc: Noel Schweers, Esq.

Certificate of Service

I, Dennison D. Marzocco, hereby certify that The Declaration of Dennison D. Marzocco with attached Exhibits is being deposited with the United States Postal Service on May 12, 2014, postage pre-paid, addressed to the following:

Timothy E. Moses, Esq.
Moses Law Group, LLC
1030 Stevens Creek Road, Suite 140
Augusta, Georgia 30907-3204

By: _____


Dennison D. Marzocco